

Town of Middlebury
Development Review Board (DRB)
Town Office Large Conference Room
Minutes of December 16, 2019
Approved 1/27/2020

Members Present: Kevin Newton, Chair, Gary Baker, V. Chair, David Hamilton, Jason Larocque, and Anne Taylor

Members Absent: Rick Emilo and John MacIntyre,

Staff Present: Jennifer Murray, Dave Wetmore

Others Present: Bernard Quesnel, Louis Quesnel, Jeffrey Flora, Daniel Norwood, Benj Deppman and Kathleen Wheatley (videographer)

MEETING AGENDA

I. Application (file #2019-28:012.000-CU) for conditional use approval by Bernard and Sandra Quesnel and Louis Quesnel for modifications to the structure destroyed by a fire in June 2019. The DRB will review the applicants request pursuant to section 845- “Rebuilding after Catastrophe”. The property is located at 74 Court Street which is located in the Office/Apartment District (OFA) on parcel #028012.000

II. Call to Order

Kevin Newton, DRB Chair, called the meeting to order at 7:00 pm, reviewed the night’s agenda, and asked if there were any non-agenda items/public communications. None expressed.

III. Approval of Minutes-

Motion by Anne Taylor- moved to approve the minutes of 10/28/2019 as presented. Jason Larocque 2nds. Discussion- Staff noted two minor corrections. **Motion approved 5-yes, 0-no,**

IV. DRB public hearings/meeting:

1. Application (file #2019-28:012.000-CU) for conditional use approval by Bernard and Sandra Quesnel and Louis Quesnel for modifications to the structure destroyed by a fire in June 2019. The DRB will review the applicants request pursuant to Section 845- “Rebuilding after Catastrophe”. The property is located at 74 Court Street which is located in the Office/Apartment District (OFA) on parcel #028012.000

Kevin Newton opened the hearing, read the warning and administered the oath to those present who intend to present testimony. Taking oath were Bernard and Louis Quesnel, Dan Norwood, Jeff Flora and Staff.

Kevin- asked if there are any DRB conflicts of interest or ex-parte communication. Jason Larocque recused himself stating he both the Quesnels and neighbor Dan Norwood are clients, which presents a conflict that will prevent his participation.

Kevin- invited the Applicants to present their application. Application was presented on behalf of the Applicants by their attorney Benj Deppman.

Benj Deppman attorney for the Quesnels stated that he had reviewed the zoning record, Notice of Violation, and zoning permit issued for the reconstruction of the structure and expressed that he has a complete picture of the issues. Benj presented seven photos labeled A-G for the DRB’s consideration and explained the application from the Quesnels’ perspective. Stated the Quesnels are here as well to answer questions. He characterized that the building presently constructed resulted from a miscommunication/ misunderstanding of the permit expectations. The Quesnels did not think they had done anything wrong by making the changes they did. Mr. Deppman read for the DRB the zoning

46 permit notes and section providing comments/conditions of approval. He read from the zoning permit
47 and stated the notes at the top were more general, describing replacement of what was there and
48 describing a 2-story structure, but the comment/conditions were very specific and detailed regarding the
49 expectations of the permit approval, including height, footprint, roofline, etc, particularly the roofline.
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51 Benj reviewed the photos labeled A and B. These exhibits were prepared by Otter Creek Engineering
52 and both show that the previous historic structure was approx. 20-ft wide and 16.9-ft high. Footprint
53 was determined by Otter Creek Engineering with a tape measure. Photo C shows that the new as-built
54 structure has the same footprint width, with an eave height of 11.5-ft and an overall height of 19.7-ft.
55 high, which is between 2-3-ft higher than the previous structure that burned. He also noted that the roof
56 line is now a gambrel style roof which provides more space for the apartment on the 2nd floor. Mr. Flora
57 the neighbor to the north had previously objected to the appearance of the former front balcony deck
58 structure and front door. In response to Mr. Flora's concerns, Benj stated the front door and balcony
59 deck structure will not be replaced. The front of the finished building will be as shown in Photo C.
60 Benj asked the DRB to label the aerial photo provided as Photo F. Photo F shows the north and west
61 setbacks are about 18-inches from the boundary. Benj noted that the west-side facing door that is shown
62 in the zoning record has been relocated to the south side and that the east and west side will appear the
63 same, with 2 windows over 2 windows. Photo C shows the window placement on the east side and
64 Photo D shows door placement for each apartment. Both doors will be located on the south side and
65 will result in less impact on neighbors. Photo B shows that the former structure's eave overhang was
66 about 16 inches along north side. The new as-built structure's eave is reduced to approx. 6 inches.
67 Photo F is an aerial photo that overlays the new structure's footprint over the former structure's
68 footprint, which is very close to the west and north boundary. The new structure is located on the
69 footprint of the former structure. The modifications to the as-built structure result in an increase of +/-
70 3ft to the overall height of the building. The floor joists were laid directly over the existing slab to level
71 the floor which raises the building by 12-inches by itself. The roofline has changed, which provides
72 more useable space which makes the 2nd floor apartment more desirable.
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74 DRB questions/comments-

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76 Kevin- The photos show the as-built structure's height and width, has the length changed? Benj referred
77 to Photo G, showing dimensions of the as-built structure are the same as the previous structure based on
78 Otter Creek Engineering's measurements. The length is about 26-1/2 feet. Benj referenced the Lister
79 card for measurements.
80

81 Anne- Is there a survey of the property prior to the fire showing lot lines and structures? Benj responded
82 that he was not aware of a survey of the property. Benj stated the orthophoto presented in Photo F is
83 based on Lister Records. Benj referenced the boundary markers located along the west boundary and
84 Norwood fence.
85

86 Dave H.- Is the west boundary line setback of the as-built building the same as the former structure?
87 Yes it is on the footprint of the former one.
88

89 Kevin- Where will the entrance to the 2nd floor apartment be located? It is shown on Photo D on the
90 south side of the building. Will you need to enclose the stairs that access the 2nd floor apartment? No.
91 Kevin asked if the former enclosed stair area was there when the Quesnels purchased the property. Benj
92 referred to Photo F said yes. Kevin expressed that an earlier photo of the carriage barn does not show
93 this addition and asked specifically if it was developed to provide access to the 2nd floor apartment,
94 Benj again referred back to historical photo F which shows the addition. Kevin expressed that his point
95 is if this area (formerly enclosed staircase area) is not to be used for access to the 2nd floor apartment is
96 it needed. What will it be used for now? Living space and utilities. The new stairs to the 2nd floor
97 apartment will not extend beyond the existing building and it will not be enclosed. What will be the
98 secondary egress from the structure? Egress windows will serve to provide the required egress. The
99 egress windows would be located on the front and rear side of building.

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Anne- How do you get down from the egress window? A ladder is not required if the window is located within 12-ft from the ground.

Dave H.- Are there any changes to service/utility locations? No, trash/recycling will continue to be stored in covered containers located along the south side of the addition, see photo D. Posts prevent vehicles from backing into the trash containers, they are not enclosed or screened.

Kevin- For the record, does the north and west side setback of the new building encroach further on the boundary than the previous carriage barn? The as-built structure setback is the same as the former structure.

Anne- What are the plans for exterior lighting? There was none on the former structure and none is planned for the new structure.

Staff questions/comments-

Jennifer- Does the west side mirror the east side? Yes. How will residents exit the building in case of a fire, would they just jump into Mr. Norwood's yard? They would jump from either of the egress windows located on the east or west side. Bernard said there is room to jump between the building and boundary, the wooden fence is the boundary. What is the total inventory of stairs, porches and decks? There would be a deck on the South side to serve the 1st floor apartment and an open stair case with an open deck on the South side to access the 2nd floor apartment. All decks would be uncovered. Would there still need to be a front balcony as before? No and nothing on north side.

Dave W.- What is the setback from the building to the west boundary? Benj responded that he did not have that information, that it was less than 5-ft. but enough for a staircase. Dave W. expressed that during his site visit there were 2 corner pins marking the back corners which appear to be located inches from the building. B. Quesnel expressed that those are new pins and do not accurately represent where his boundary is. He believes the wooden fence is the boundary. Dave W. expressed that they did not appear to be new and that the former structure and new as-built structure is located only a foot from the boundary. Dave W. will ask Mr. Norwood the same question later.

Dave W. asked if Benj took the oath as he is providing most of the testimony. Benj respond no, that he was an officer of the court and an attorney and he does not required to take an oath. Kevin noted that our Rules of Procedure require all testimony by witnessed shall be given under oath. Benj agreed to affirm that his comments are true to the best of his knowledge and that he would be happy to ask the Quesnels to affirm the information he has presented. He is not testifying for the Quesnels and the DRB should feel free to ask questions of the Quesnels.

Mr. Quesnel- is the wooden fence along west side the boundary between the Norwoods and yourself? Yes that is the boundary.

Kevin asked B. Quesnel to affirm that the as-built building sits on the former foundation and does not encroach further into the setback. Mr. Quesnel stated that was true.

Gary B.- asked if the as-built building overhangs the slab foundation? Mr. Quesnel said yes, by up to 1-1/2 inches all the way around.

Anne- asked if there was windows on the west side of the former structure. Yes, based on the burned out photo in the zoning record there were 2 on the ground level and one large one on the second level.

Dave H.- asked if the as-built structure changed roof runoff. No change.

Public questions/comments

Dan Norwood- homeowner lives at 110 Charles Ave and backs up to the Quesnels' west boundary. He has concerns about the new construction. The roofline and height has changed significantly, which adds to the surface area of the building as it faces his property. He expressed that when the change of use was approved it did not comply with Section 733 and a waiver could not have been approved (Section 724) because the building was within 5-ft. of the property line. He understands that the 2016 approval can't be changed, but the Quesnels' as-built structure increases the degree of non-compliance that existed previously. Mr. Norwood stated that he constructed the wooden fence approx. 2-ft. from the actual boundary. The actual boundary is only 6-12 inches from the as-built structure. The original boundary woven-wire fence still exists, which extends south from the southwest corner of the new building. He expressed that the new and expanded as-built structure is in violation of 733 and 724. The new structure's change to roof line and windows create more noncompliance and is much more imposing than the former one. All west-facing windows look directly into his back yard. He expressed that he lost privacy with the increased height and the new windows greatly overlook his back yard. He also expressed that the 8-ft by 10-ft. addition shown was not part of the original building, but was added when the Quesnels converted the carriage barn to apartments. Overall, the degree of change has made it very imposing. Mr. Norwood commented that the Quesnels' new as-built building improves the size and marketability of their apartments, but it has come at a cost to his privacy and property value. He further expressed that the Quesnels can't build or maintain this structure without affecting and trespassing on his property. They would need permission from him to work on the west side of the building, and referred to the building materials leaning against the west side of the building that are on his property.

Anne- asked for clarification-is the wooden fence the boundary? Mr. Norwood responded no, he built the fence 2-ft from the boundary, the corner pins show the boundary.

Dave H- referred to the staff photos and asked Mr. Norwood if the post in the picture was the boundary corners marker? He responded, yes.

Kevin- asked if the 8-ft. by 10-ft stair addition existed prior to the Quesnel purchase? Bernard stated that the addition existed prior to their purchase.

Kevin- asked if there are any other questions/comments. None were expressed.

On a motion by David Hamilton and 2nd by Anne Taylor, the DRB moved to close hearing and enter deliberative session at 7:50. Motion passed 4- yes, 0- no.

At 9:25, Gary Baker made a motion to exit deliberative session, seconded by David Hamilton. Motion passed 4-yes, 0-no.

Motion by David Hamilton- I move that the Middlebury Development Review Board, having reviewed the application submitted and having heard and duly considered the testimony presented at the public hearing of December 16, 2019, **deny** this conditional use for the as-built modifications to the structure destroyed by fire presented in the application by the Bernard, Sandra and Louis Quesnel located at 74 Court Street, parcel # 028012.000, subject to conditions outlined by the DRB in the written decision. The reasons for denial include the change in height and gambrel roof shape which both negatively impact the historic neighborhood character and increase the degree of non-compliance. 2nd by Anne Taylor.

Motion to deny Quesnel application passed 4-yes and 0-no.

1. **Other business-**
1. None

207 **2. Adjournment**
208 **Motion by David Hamilton-** moved the DRB to adjourn 2nd by Gary. **Motion passed, 4-yes -0-no.**
209 Meeting adjourned at 9:25 PM
210 Minutes Submitted by Dave Wetmore